In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 458

RUTH LAMAR LEHMAN, *Petitioner*

v.

COMMISSIONER OF INTERNAL REVENUE

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The memorandum opinion of the Tax Court (R. 45-46) is not officially reported. The opinion in the related case of *Robert Lehman* v. *Commissioner* is reported in 17 T.C. 652. The opinion of the Court of Appeals (Pet. App. A-1-A-2) is reported in 234 F. 2d 958.

JURISDICTION

The judgments of the Court of Appeals were entered on June 29, 1956. (Pet. App. A-4, A-6, A-8.) The

petition for a writ of certiorari was filed on September 27, 1956. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254.

QUESTION PRESENTED

Whether the court below erred in affirming the Tax Court's determination that annual payments of $5,000 made by taxpayer's former husband to taxpayer's mother "for and in behalf of" taxpayer, pursuant to an agreement incorporated in a divorce decree, constituted income taxable to taxpayer under Section 22(k) of the Internal Revenue Code of 1939.

STATUTE AND REGULATIONS INVOLVED

The relevant statute and Regulations are Sections 22(k) and 23(u) of the Internal Revenue Code of 1939, and Section 29.22(k)-1(a) of Treasury Regulations 111. These are set out in Appendix B, *infra*, pp. 13-16.

STATEMENT

The facts as stipulated (R. 54-56, 97-107) and found by the Tax Court (R. 45-46) are as follows:

Taxpayer and Robert Lehman were married in 1929. They had no children. On March 10, 1934, they entered into a separation and property settlement agreement which was approved and incorporated in a divorce decree on May 1, 1934. (R. 54-55.) Pursuant to that agreement, during each of the years involved here Robert Lehman made payments of $20,000 to taxpayer and $5,000 to taxpayer's mother, Josephine Lamar. (R. 55.)

Taxpayer included the payment of $20,000 in her returns for each of the years in question. She did not include in income the $5,000 payment made to her mother in each of those years. On her returns for each year she listed her mother and father as dependents. (R. 55-56.)

The relevant provisions of the separation agreement (R. 97-99) are as follows:

> WHEREAS, the said Husband and Wife desire to continue to live separate and apart and to provide for the maintenance and support of said Wife in lieu of dower and all further claims by her for support; and
>
> WHEREAS, the Wife is the sole support of her mother, Josephine Lamar, and desires hereby to make provision for her support; and
>
> * * * * *
>
> NOW, THEREFORE, in consideration of the mutual covenants herein contained and the duty of the Wife to support her mother, and for other good and valuable considerations, the parties hereto mutually agree and covenant with each other as follows:
>
> * * * * *
>
> 3. The Wife agrees that the payments provided to be made to her, and for her benefit pursuant to the provisions hereof, shall be for her full and complete maintenance, support, clothing and all other necessaries of every kind and for the full satisfaction of the duty of support by the Husband.
>
> 4. The Husband agrees to pay to the Wife's mother, Josephine Lamar, for and in behalf of

said Wife, the sum of Five Thousand ($5,000) annually in equal quarterly installments of One Thousand Two Hundred and Fifty Dollars ($1,250) each, payable in advance on the tenth day of March, June, September and December of each year so long as the said Josephine Lamar shall live.

5. In case a divorce is obtained by either party and the Wife shall thereafter remarry, the Husband shall make no further payments to the Wife and all obligations to make any payments hereunder to said Wife shall cease and determine, but the Husband shall continue to pay the sum of Five Thousand Dollars ($5,000) annually as aforesaid to the Wife's mother, Josephine Lamar, so long as she shall live.

* * * * *

In *Robert Lehman* v. *Commissioner,* 17 T.C. 652 (see Appendix A, *infra,* pp. 9-13), the Tax Court held that Robert Lehman was entitled to a deduction of the $5,000 payment to Mrs. Lamar under Section 23(u) of the Internal Revenue Code of 1939 since the payment was taxable to Ruth Lehman under Section 22(k). In the present case, on the authority of and for the reasons stated in the *Robert Lehman* case, the Tax Court held that the payments were taxable to Ruth. (R. 45-46.) In a *per curiam* opinion, the Court of Appeals affirmed. (Pet. App. A-1-A-2.)

ARGUMENT

This case turns upon an interpretation of the terms of a separation agreement entered into by the taxpayer and her former husband, and presents no ques-

tion of general importance. The decision below is correct, there is no conflict, and no occasion for further review.

1. The decision below, affirming that of the Tax Court, is clearly correct. Section 22(k) of the Internal Revenue Code of 1939 (Appendix B, *infra*, pp. 13-14), requires inclusion in the income of a divorced wife of periodic payments received in discharge of a legal obligation which, because of the marital relationship, is incurred by the former husband under the divorce decree or a written agreement incident to the divorce. Correlative Section 23(u) (Appendix B, *infra*, pp. 14-15) authorizes the husband to deduct amounts which are taxable to the wife under Section 22(k). By the terms of the separation agreement incorporated in the divorce decree, taxpayer's husband agreed to pay $20,000 per year directly to taxpayer, and an additional $5,000 per year to taxpayer's mother for life "for and in behalf of said Wife [taxpayer]". The agreement recited that taxpayer was "the sole support of her mother", and that the annual payments to the mother were to be made "in consideration of * * * the duty of the Wife to support her mother". (R. 97-98.) Since the payments to the mother were for taxpayer's benefit, in consideration of her recognized duty to support her mother, they constituted income to taxpayer (*Old Colony Trust Co.* v. *Commissioner*, 279 U.S. 716, 729), and hence were no less taxable to her under Section 22(k) than the balance of the alimony payments made directly to her. Insofar as the husband was concerned, it was immaterial whether

the amounts paid in discharge of his obligation to support the wife were paid directly to her, or to a designated third party for her benefit.

There is no basis in the record or the findings for taxpayer's assumption, on which her entire argument rests, that the payments in question must be viewed as annual gifts by her former husband to her mother. The payments were not voluntary, but were made pursuant to a contractual obligation to pay alimony undertaken in the separation agreement incorporated in the divorce decree. As the agreement itself shows, they were made to the mother "for and in behalf of" taxpayer, and "in consideration" of taxpayer's acknowledged duty to support her mother. In making them, the husband was discharging *pro tanto* his own obligation to support taxpayer—an obligation running to taxpayer, incurred because of the marital relationship, and imposed upon him by the decree. The courts below correctly held, therefore, that all the alimony payments, those made to the mother on taxpayer's behalf as well as those made directly to taxpayer, fell within Section 22(k).

2. The decision below is not in conflict with any other decision. *Mandel* v. *Commissioner,* 229 F. 2d 382 (C.A. 7th), with which taxpayer asserts conflict (Pet. 9, 11-13), involved payments under a separation agreement the terms of which were materially different from those of the agreement here involved. There, the payments were made to adult children for and in behalf of the children themselves, whereas here (as the agreement explicitly provides) the payments were

made to the wife's mother for and in behalf of the wife. Moreover, in the *Mandel* case the wife was under no obligation to support the payee-children, whereas in this case (as the agreement also explicitly recites) the wife was the sole support of the payee-mother. Indeed, in affirming the Tax Court's decision in the *Mandel* case, the Court of Appeals (p. 388) took pains to distinguish that case from this one on these dual grounds.

3. Nor is there any conflict, as taxpayer alleges (Pet. 9, 18-20), with *Lucas* v. *Earl*, 281 U.S. 111; *Helvering* v. *Eubank*, 311 U.S. 122; *Helvering* v. *Horst*, 311 U.S. 112; and *Gould* v. *Gould*, 245 U.S. 151. Those cases stand for the proposition that a gift of income is ineffectual to relieve the donor of income tax. They have no bearing upon the tax treatment of alimony payments under Section 22(k), enacted for the very purpose of shifting tax liability with respect to such payments from the husband to the wife. Taxpayer's reliance upon those decisions begs the issue by assuming—contrary to the findings of both courts below—that the payments in question constituted annual gifts of income by the husband to his mother-in-law, rather than alimony payments made for and on behalf of taxpayer pursuant to a separation agreement incident to a divorce. Both courts below having rejected taxpayer's contention that the payments were gifts to her mother, their concurrent findings are entitled to finality here. *Corn Products Co.* v. *Commissioner*, 350 U.S. 46, 51; *Comstock* v. *Group of Investors*, 335 U.S. 211, 214.

4. Taxpayer also asserts (Br. 9, 14-15) that the decision below, insofar as it holds that the wife was obligated to support her mother, is contrary to New York law. There is no need to pass on the validity of the claim (we believe it to be erroneous), since the courts below relied, not on an interpretation of New York law, but on the recitations in the separation agreement itself that taxpayer was the sole support of her mother, had a duty to support her, and desired to make provision for her support; also on the stipulation in the agreement that the payments to the mother were "for and in behalf of said Wife". The question is one of interpretation of the particular agreement, rather than of state law.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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Solicitor General.

Charles K. Rice,
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Harry Baum,
David O. Walter,
Attorneys.

October 1956

APPENDIX A

ROBERT LEHMAN, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

(17 T. C. 652)

Docket No. 28246

Promulgated October 10, 1951

1. Income-Deduction-Alimony Payments-Sections 23 (u), 22(k).—Payments made by a divorced husband to the mother of his former wife, "for and in behalf of" the wife who was the sole support of her mother are deductible under section 23(u)

* * * * *

OPINION

MURDOCK, *Judge:* The Commissioner determined a deficiency of $6,018.20 for 1944. The issues for decision are whether an annual payment of $5,000 to the mother of the petitioner's divorced wife is deductible under section 23(u) and whether a partnership in which the petitioner had an interest realized ordinary income on January 1, 1944, when some restrictions terminated on stock theretofore received by the partnership. The parties filed a stipulation of facts which is adopted as the findings of fact.

The petitioner filed his individual return for 1944 with the collector of internal revenue for the second district of New York.

The petitioner and Ruth Lamar were married in 1929. They had no children. They entered into a separation and property settlement agreement on March 10, 1934, providing that they would live separately, the petitioner would pay Ruth $20,000 annually

as long as she lives and remains unmarried and would pay Ruth's mother $5,000 annually for life "for and in behalf of" Ruth, and the payments to Ruth and "for her benefit pursuant to the provisions hereof, shall be for her full and complete maintenance, support, * * * and for the full satisfaction of the duty of support by the Husband." The agreement contains a recital that Ruth is the sole support of her mother and "desires hereby to make provision for her support."

Ruth obtained a divorce from the petitioner in Nevada on May 1, 1934, and the agreement of March 10, 1934, was approved in the decree.

The petitioner paid Ruth $20,000 and her mother $5,000 in 1944, pursuant to the agreement. The Commissioner, in determining the deficiency, allowed a deduction under section 23(u) of $20,000 but disallowed the additional deduction of $5,000 claimed.

The petitioner did not testify but introduced a deposition of one of the attorneys who represented him in the 1934 transactions in which the attorney stated that the provisions relating to the payment of $5,000 annually for life to Ruth's mother were inserted at the insistence of an attorney, now deceased, who represented Ruth in those transactions. Ruth, her mother, and an attorney who assisted in representing Ruth in the 1934 transactions gave testimony indicating that the provision for the payments to Ruth's mother originated with the petitioner and was inserted in the agreement because he knew the situation, was fond of his mother-in-law, and wanted to provide for her. However, the origin of the provision is not determinative of the present issue. The contract was prepared and the parties made it their agreement. The terms of that agreement, entered into long before sections 22(k) and 23(u) were enacted, must now be regarded

as expressing the agreement of the parties. Ruth felt obligated to support her mother. The petitioner and Ruth agreed that the petitioner would pay $5,000 annually for the mother's life directly to the mother "for and in behalf of" Ruth and that the payments to be made to Ruth and "for her benefit pursuant to the provisions hereof, shall be for her full and complete maintenance, support, * * * and for full satisfaction of the duty of support by the Husband." If the payments had been to a landlord, a grocer, or the like, there would be no question of their being taxable to Ruth. Cf. *Anita Q. Steward,* 9 T.C. 195; *Estate of Boies C. Hart,* 11 T.C. 16. The payments discharged Ruth's obligation to support her mother. The $5,000 was constructively received by Ruth in discharge of a legal obligation imposed on the petitioner because of the marital or family relationship under a written instrument incident to the divorce. It is therefore taxable to Ruth under section 22(k) along with the $20,000 and likewise is deductible by the petitioner under section 23(u).

* * * * *

Reviewed by the Court.

Decision will be entered under Rule 50.

DISNEY, *J.,* dissenting: I must dissent from the conclusion of the majority on the subject of the first headnote. It depends upon whether payments by a divorced husband to the mother of his former wife, and "for and in behalf of" such former wife, who, it was agreed, was the sole support of her mother, can reasonably be considered within the intendment of Section 22(k) of the Internal Revenue Code. That section, *inter alia,* provides that a periodic payment by the divorced husband to the divorced wife shall be includible in her income and not in his if it is made in discharge

of "a legal obligation which, because of the marital or family relationship, is imposed upon or incurred by such husband" under a decree of divorce or separate maintenance or under a written instrument incident thereto. The question is therefore how broadly such language shall be construed. I realize that in the broadest sense the obligation of the ex-husband here to pay the mother of his former wife might possibly be considered to be imposed upon him "because of the marital or family relationship," merely because without the marital or family relationship there would have been no such mother-in-law and no occasion for him to agree to support such a person. But I cannot conceive that Congress intended to use the above-quoted crucial language in any such broad sense or had in mind the situation such as here involved. Rather, I believe that the legal obligation, in discharge of which the periodic payment must be made in order for it to be taxable to the wife, must be one which is imposed upon the divorced husband, or recognized by him in a written instrument incident to the divorce or settlement or separation, as an essential and integral result of the marital relationship, such as, for example, caring for children or maintaining the former wife. Congress did not, in my view, include a mere promise to pay other matters even though made to the former wife and even though she might have had a duty in that respect, such as to take care of her mother. Obviously no ordinary contemplation of a marital obligation includes support of a mother-in-law. The fact that the $5,000 per annum to be paid to the divorced wife's mother is in addition to the $20,000 to be paid to the divorced wife, shows that the $5,000 was not necessary for the support of the wife and therefore not within reasonable bounds of a marital-based obligation. Though the written agreement involved recites that

Ruth is the sole support of her mother and desires to make provision for her support, the facts neither so show nor show that the $5,000 was any reasonable requirement in that respect, that is, fail to show that Ruth was under any duty of furnishing that much for her mother. No divorce court could, in my opinion, require a divorced husband to support his former mother-in-law, without a voluntary agreement such as this appears to be. In any event, I do not believe that "because of the marital or family relationship," was meant to encompass the situation here involved or relieve the husband from taxation upon income earned by him. The Committee reports of both the House and Senate covering section 22(k) referring to the legal obligation here being discussed state: "This section applies only where the legal obligation being discharged arises out of the family or marital relationship in recognition of the *general obligation to support,* which is made specific by the instrument or decree." (Emphasis added.) 1942-2 C.B., pp. 428, 568. Certainly, general obligation to support does not include obligation to support a mother-in-law. I therefore dissent.

TURNER and TIETJENS, *JJ.*, agree with this dissent.

APPENDIX B

Internal Revenue Code of 1939:

SEC. 22 GROSS INCOME.

* * * * *

(k) [as added by Section 120(a) of the Revenue Act of 1942, c. 619, 56 Stat. 798] *Alimony, Etc., Income.*—In the case of a wife who is divorced or legally separated from her husband under a decree of divorce or of separate maintenance, periodic payments (whether or not made at regu-

lar intervals) received subsequent to such decree in discharge of, or attributable to property transferred (in trust or otherwise) in discharge of, a legal obligation which, because of the marital or family relationship, is imposed upon or incurred by such husband under such decree or under a written instrument incident to such divorce or separation shall be includible in the gross income of such wife, and such amounts received as are attributable to property so transferred shall not be includible in the gross income of such husband. This subsection shall not apply to that part of any such periodic payment which the terms of the decree or written instrument fix, in terms of an amount of money or a portion of the payment, as a sum which is payable for the support of minor children of such husband. In case any such periodic payment is less than the amount specified in the decree or written instrument, for the purpose of applying the preceding sentence, such payment, to the extent of such sum payable for such support, shall be considered a payment for such support.
* * *

(26 U.S.C. 1952 ed., Sec. 22.)

SEC. 23. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

* * * * *

(u) [as added by Section 120(b) of the Revenue Act of 1942, *supra*] *Alimony, Etc., Payments.*— In the case of a husband described in section 22(k), amounts includible under section 22(k) in the gross income of his wife, payment of which is made within the husband's taxable year. If the

amount of any such payment is, under section 22(k) or section 171, stated to be not includible in such husband's gross income, no deduction shall be allowed with respect to such payment under this subsection.
(26 U.S.C. 1952 ed., Sec. 23.)

Treasury Regulations 111, promulgated under the Internal Revenue Code of 1939:

Sec. 29.22(k)-1. *Alimony and Separate Maintenance Payments—Income to Former Wife.*—(*a*) *In general.*—Section 22(k) provides rules for treatment in certain cases of payments in the nature of or in lieu of alimony or an allowance for support as between spouses who are divorced or legally separated under a court order or decree. For convenience, the payee spouse will hereafter in this section of the regulations be referred to as the "wife" and the spouse from whom she is divorced or legally separated as the "husband." See section 3797(a)(17).

In general, section 22(k) requires the inclusion in the gross income of the wife of periodic payments (whether or not made at regular intervals) received by her after the decree of divorce or of separate maintenance. Such periodic payments may be received from either of the two following sources:

(1) In discharge of a legal obligation which, because of the marital or family relationship, is imposed upon or incurred by the husband, or

(2) Attributable to property transferred (in trust or otherwise) in discharge of a legal obli-

gation which, because of the marital or family relationship, is imposed upon or incurred by the husband.

* * * * *

Section 22(k) applies only where the legal obligation being discharged arises out of the family or marital relationship in recognition of the general obligation to support, which is made specific by the instrument or decree. Thus, section 22(k) does not apply to that part of any periodic payment which is attributable to the repayment by the husband of, for example, a *bona fide* loan previously made to him by the wife, the satisfaction of which is specified in the divorce decree as a part of the general settlement between the husband and wife.

* * * * *

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